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### The Indian state in a liberalising landscape

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*There has been much discussion recently on the ‘great Indian land grab’, i.e., the acquisition of fertile land by the government, and the handing over of this to large-scale industry. What do these ongoing land transfers tell us about the nature of the Indian state? To engage with prevalent views about state withdrawal from the economic sphere, or its reconstitution as a regulatory entity, this paper builds a picture of the state in a liberalising landscape based on empirical evidence. It outlines the role of the state in Gujarat province, during a transfer of 30 square kilometres of forest and coastal land to a cement manufacturing and exporting operation ‘Karkhana Ltd’.*

*The case of land liberalisation illustrated by the experience of Karkhana does not evince a state in withdrawal. Nor do we witness a regulatory state that watches a changing economy from the legal and coercive sidelines. As the normative legitimator of liberalisation, a buffer in the contentious politics of land, and as an institutional promoter of and manoeuvrer through the new land regime, India’s state is central to the liberalising landscape.*

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There has been much discussion recently on the ‘great Indian land grab’. The term denotes the on-going acquisition of fertile land by the state<sup>2</sup>, and the handing over of this to industry, the promoters of Special Economic Zones (SEZs) and other such players of India’s new, liberalising economy. Transfers of land, it appears, are even being carried out at rock bottom prices<sup>3</sup>. They become especially significant given that less than half a century ago, the state that is supportive of them was associated with slogans like ‘land to the tiller’<sup>4</sup>.

The ‘land to the tiller’ reforms under which the redistribution of land from large landowners to actual tillers was proposed by India’s newly independent state, were only a partial success. Yet, in Kutch district of Gujarat province where this paper is empirically based for instance, by 1958 7714 square kilometres of land owned by the former ruling principalities had been requisitioned under the Bombay (Kutch Inams) Abolition Act, and distributed amongst 61,902 people<sup>5</sup>.

Having redistributed land, an interventionist state had then imposed restrictions on the uses to which it could be put. For instance in Gujarat, redistributed or ‘new tenure’ land could not be sold without the state’s permission. If sale was allowed, it would be limited to agriculturists living within an eight kilometre radius. Similar authorisation was required to convert agricultural land to a non-agricultural purpose<sup>6</sup>. The state’s idea behind these measures, of course, was to retain agricultural land within the rural, primarily agrarian economy, and prevent it from leaving the possession of ‘sons of the soil’.

Moving forward, under the larger regime of liberalisation, from 1989-90 Gujarat’s state had put in place various measures that reversed its earlier interventions in the land economy. For instance in 1995, the restrictions on purchasing land within eight kilometres of the buyer’s residence were lifted. In the same year, the conversion of agricultural land up to ten hectares for a non-agricultural purpose, without any authorisation from the state, was permitted<sup>7</sup>. To reinforce the direction in which these changes were heading, the state declared in 2005 that it intended to open up 16,006 square kilometres of land for large-scale corporate farming and for industry<sup>8</sup>. Quite clearly, the great Indian land grab and the re-agglomeration of land in the hands of the

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<sup>2</sup> In this paper, the wider concept of ‘the state’ has been consciously used in most places, as opposed to ‘government’. The latter refers to the institutional aspects of the state, including the bureaucracy, political executive and police machinery. The former includes ideas and norms like ‘land to the tiller’, as well as institutions of governance. See Abrams, P. (1988) ‘Notes on the Difficulty of Studying the State’, *Journal of Historical Sociology*, 1(1), March. Pgs. 58-89

<sup>3</sup> Bidwai, P. (2006) ‘The great land grab’, *Frontline*, September 9-22; Ramdas, L. and Ramdas, L. (2007) ‘Land Grab in Raigad’, Letters, *Economic and Political Weekly*, January 13; Pgs. 78, 172; Sen, A.K. (2006) ‘Land Struggle in Singur’, Letters, *Economic and Political Weekly*, September 23, Pgs. 3994, 4088; Thakurta, P.G. (2006) ‘Economic zone plans polarise India’, *BBC News / South Asia*, 2 October

<sup>4</sup> Herring, R.J. (1983) *Land to the Tiller: The Political Economy of Agrarian Reform in South Asia*. New Haven: Yale University Press

<sup>5</sup> Government of Gujarat (1976) *The Land Reforms Laws in Gujarat*. Gandhinagar: Government Central Press, Pg. 20

<sup>6</sup> Government of Gujarat (1988) *The Bombay Tenancy and Agricultural Lands Act, 1948 (As modified up to 31<sup>st</sup> December 1988)*, Legal Department, Gandhinagar: Government of Gujarat

<sup>7</sup> Times of India ‘Curbs on conversion of farmland lifted. State to amend land revenue Act’, *Times of India*, Ahmedabad Edition, 2/12/95; Indian Express ‘Land Acts to be amended to favour industry’, *Indian Express*, Ahmedabad Edition, 4/1/96

<sup>8</sup> Times of India, ‘Protest against GR on giving wasteland to industries’, *Times of India*, Ahmedabad Edition, 10/8/05

mega players of the new economy needs to be seen within a contextual shift from ideas and policies of ‘land to the tiller’ to those of ‘land liberalisation’<sup>9</sup>.

What does the apparent shift in emphasis from ‘land to the tiller’ to land liberalisation tell us about the nature of the Indian state? Is this a state that is actively transferring productive resources to corporate farmers and large-scale industry as it prepares to unequivocally withdraw from the economic and developmental sphere? Alternatively, is this a state that is not necessarily withdrawing from the economy under India’s liberalising regime, but is altering its *raison d’etre* to a more regulatory focus<sup>10</sup>? Will this regulatory state actively change land laws, and then expend its administrative, legal or even coercive energies on ensuring their compliance, albeit from the developmental sidelines?

Pegging the case of land on to the minimalist or regulatory analytical frameworks of the contemporary Indian state would be relatively straightforward, given that these views are supported by significant sections of the academic and policy-making establishment<sup>11</sup>. However, there would be a large element of speculation in this analytical exercise. One would be assuming that all that the state is doing in India today is changing and then regulating land laws, and stepping back from any intervention beyond that point. This interpretation would also indicate that in the making and monitoring of land policy, the state’s role is linear, mechanical and almost a-political. The question to raise at this point is- do these speculative notions about India’s state in a liberalising landscape stand up to empirical scrutiny? What, indeed, does the story of land tell us about India’s state today? To engage with these questions is the task of this paper.

This paper builds a picture of the Indian state based on empirical evidence. It outlines the role of the state in Gujarat during a transfer of 30 square kilometres of forest and coastal land to a cement manufacturing and exporting operation ‘Karkhana Ltd’<sup>12</sup> in 1993-95. Section I lays out the process of acquisition of land by Karkhana, and the official, facilitative role played by the state in this. Section II highlights some criticism faced by Karkhana, indicating that the liberalisation of land in India is not proceeding unopposed. Section III goes beyond the state’s initial role of sanctioning land to Karkhana. It explores its continuing support to the Company through periods of protest and litigation, and suggests that Karkhana would not have been able to establish operations in Kutch without the active intervention of Gujarat’s state. Section IV concludes with a statement on what the Karkhana deal tells us about the nature of the state in a liberalising landscape.

<sup>9</sup> See also Sud, N. (2007) From Land to the Tiller to Land Liberalisation: The Political Economy of Gujarat’s Shifting Land Policy’, *Modern Asian Studies*, Volume 41, Number 3, May. Pgs. 603-638

<sup>10</sup> Regulation refers to the administrative technology of influencing and monitoring the market, including non-state welfare organisations and functions through law-backed specialised ‘regulating’ agencies. This technology seeks to replace the method of public ownership or more direct state intervention in the economy, which was popular in the developed as well as developing world in the mid-twentieth century. The privatisation and unbundling of services formerly provided by the state, with the latter taking on the role of facilitator and regulator, has gained momentum in the developing world from the mid-1980s. See Moran, M. (2002) ‘Review Article: Understanding the Regulatory State’, *British Journal of Political Science*, 32. Pgs. 391-413

<sup>11</sup> For an influential regulatory conceptualisation of the state see World Bank (1997) *World Development Report: The State in a Changing World*. New York: Oxford University Press. For a minimalist view see Lal, D. (1983) *The Poverty of ‘Development Economics’*, Paperback 16, 1<sup>st</sup> Edition. London: Hobart

<sup>12</sup> Pseudonym

Data for the paper was collected during fieldwork in Gujarat from June 2004 to January 2005. This fieldwork was conducted for a DPhil in Development Studies at the University of Oxford. Sources for the paper include official policy documents, formal notes and communications of the departments that were associated with the Karkhana case, viz. Industry, Revenue and Forest, legal documents and affidavits filed by the Government of Gujarat (GoG), Government of India (GoI), Karkhana Ltd. and various NGOs when the land acquisition got embroiled in controversy, interviews with activists and lawyers familiar with the case, and reports filed by the Gujarati as well as national media.

#### A company looks for land in liberalising Gujarat: setting out the Karkhana case

Karkhana had no experience of manufacturing cement when it came looking to set up a mega cement plant in Kutch. When established in 1985 in a South Indian province, the Company produced leather and PVC plastic products. In 1991-92 however, it started viewing Kutch as a potential base for its new venture. This remote district of Gujarat is rich in sand and minerals like limestone that are used in cement manufacture, and importantly, the state was keen to encourage private enterprise in the sector.

Of course, well beyond the cement industry, Gujarat's state has generally embraced the economic reforms initiated nationally in 1991. Its reputation is that of leading one of the most rapidly liberalising provinces in India<sup>13</sup>. The state has actively promoted slogans like 'Gujarat Going Global' and 'Vibrant Gujarat', with a view to attracting investors and making Gujarat India's 'Number One' province in the economic development stakes<sup>14</sup>. Quite understandably, its reception of Karkhana Ltd. was enthusiastic.

In 1993, the then Janata Party-Congress coalition government had welcomed the company's proposal to set up a mega- 2.6 million tonnes a year- cement manufacturing and export facility in coastal Kutch with an investment of Rupees 7 billion. To make its project viable, the Company wanted to purchase around 8 square kilometres of land for setting up a factory, and a further 2.5 square kilometres for constructing warehouses, roads and a private jetty from which to transport cement by sea to west and south India, West Asia, Pakistan, Sri Lanka, Singapore and other neighbouring countries. Finally, it was looking to lease around 20 square kilometres of land from the GoG for mining Kutch's lignite, limestone and bauxite deposits.

Karkhana's mining proposal brought into its ambit the Narayan Sarovar Wildlife Sanctuary (NSWS) that had been established in Kutch in 1981. This sanctuary, in Lakhpat block encompassed 765.79 kilometres, and housed a variety of wild life, local and migratory birds, and flora. The specific purpose of establishing the sanctuary had been stated by the GoG as 'protecting, propagating and developing wildlife and environment'<sup>15</sup>. This was considered especially important in an arid district with barely 2.5 per cent green cover. All these considerations were set aside when Karkhana came calling.

As the Wildlife (Protection) Act under which the NSWS had been established did not allow mineral exploitation, the government issued a notice in 1993 declaring

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<sup>13</sup> Hirway, I. and D. Mahadevia (1999) *Gujarat Human Development Report 1999*. Ahmedabad: Mahatma Gandhi Labour Institute

<sup>14</sup> Government of Gujarat (2003) *Gujarat Going Global. Gujarat Industrial Policy 2003*. Gandhinagar: Industries and Mines Department, Government of Gujarat

<sup>15</sup> Government of Gujarat (1981) Notification, Agriculture, Forest and Co-operation Department, 14 April. Gandhinagar: Government of Gujarat

that it had delimited the sanctuary. From 765.79 square kilometres, it had been reduced to a mere 94.87 square kilometres. Following a petition from an NGO, the Consumer Education and Research Society (CERS) challenging the delimitation of the NSWS, the High Court of Gujarat stepped in to reverse the government's decision. Its rationale was technical, i.e., under the Wildlife (Protection) Act, only the legislature had the authority to change boundaries. Since the Janata-Congress government had taken an executive decision without consulting the legislature, its action was void<sup>16</sup>.

Even as its mining project was stuck in Court, Karkhana had been confident enough to lay the foundation stone of its cement plant outside the NSWS area<sup>17</sup>. In fact, right after the Court verdict which effectively closed its chances of mining for limestone locally, the Company had been sold 7.3 square kilometres of land, in Abdasa Block by the government. It had also bought 2.5 square kilometres of land from the government on the coast in Abdasa, for building its private jetty. The latter piece had been sold to it at the ridiculously low price of 500 rupees a hectare<sup>18</sup> (100 hectares = 1 square kilometre).

Despite the sale of almost 10 square kilometres of revenue and forest land formerly owned by the government to Karkhana, for the project to take off, a mining lease was imperative. Thus, the matter of delimiting the NSWS was resurrected as soon as the BJP government came to power in March 1995. In July, it took the issue to the legislative assembly. On 27 July, with little debate and in the absence of the Opposition that had been expelled from the assembly for rowdy behaviour, Gujarat's legislature agreed to the delimitation of the NSWS from 765.79 to 444.23 square kilometres.

In the days following the delimitation of the sanctuary, newspapers reported that 20 square kilometres of former NSWS land would be leased to Karkhana. In addition, the encouraging stance of the state had prompted applications from 25 cement manufacturers for setting up plants in Kutch, with a proposed investment of Rupees 50 billion<sup>19</sup>. These Companies had applied for land sales and mining leases amounting to 800 square kilometres in and around the NSWS area<sup>20</sup>. Later, an industrial plan for the region forecast that it could accommodate 43 large cement plants, making Kutch a cement hub<sup>21</sup>. This plan said little about where water for the water-intensive cement industry would be sourced in this severely water scarce, desert region.

Karkhana, in a sense then, became the leader in the potential opening up of Kutch to the cement and infrastructure industry. After clearing the initial hurdle of obtaining a mining lease in a former wildlife sanctuary, by 1995 the Company was in possession of 30 square kilometres of land in Kutch. This may suggest that with

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<sup>16</sup> High Court of Gujarat, in Lok Adhikar Sangh (1995) Special Civil Application No. 8799 of 1995, in the High Court of Gujarat at Ahmedabad. Unpublished Document

<sup>17</sup> Nambiar, P. (1995) 'Shrinking sanctuary. The consequences of denotification', *Frontline*, September 8-21

<sup>18</sup> Collectorate Kutch (1995) *Order No. Land-Pa-Vashi-1301-79*, Revenue Branch, Collector's Office, Kutch, Unpublished official order

The low sale price of this land becomes even more stark when one reckons that Rupees 80,000-100,000 would be the minimum price of a one-room shanty in some of the poorer slums in Ahmedabad city today (Achyut Yagnik, social activist, Ahmedabad, personal communication, August 2006).

<sup>19</sup> Indian Express (1995) 'Narayan Sarovar sanctuary delimited', *Indian Express*, Ahmedabad Edition, 28/7/1995

<sup>20</sup> Lok Adhikar Sangh (1995)

<sup>21</sup> Nambiar, P. (1995, 73)

sufficient support from a proactive state, land liberalisation is proceeding at an even pace in Gujarat. However, the fortunes of Karkhana through the mid and late 1990s question this assumption.

After taking possession of its land, the Company continued to face resistance and legal action from NGOs, Kutchi peoples' associations, even government departments, through much of the 1990s. Its journey in Gujarat was thus by no means smooth. The next section looks at some opposition to the Karkhana enterprise. It becomes the context for later examining the actions of the state not only in allowing Karkahana's acquisition of land, but also supporting the Company well after its initial facilitating role was over.

### Questioning the transfer of land to Karkhana

The rapid pace at which the landscape of Kutch was being reconfigured through land liberalisation in the 1990s attracted a spate of litigation. In the Karkhana case, immediately after the delimitation of NSWS in 1995, the NGO CERS filed a suit in the High Court of Gujarat. It indicated that even though the area of the NSWS had been reduced flouting concerns for wildlife, the former sanctuary area was still forested. No commercial activity and felling of trees was possible there, and even under absolute compulsion, permission for this activity was required from the national Ministry of Environment and Forests (MoEF). The litigant asked, had the proposed cement plant been given this permission? If so, then why had the locals who depended on this forested area for a living not been informed about this<sup>22</sup>?

Further, in October 1995, Lok Adhikar Sangh (LAS), an NGO, along with three other Kutchi and Gujarati NGOs, filed a petition against Karkhana and the Governments of India and Gujarat. They challenged the NSWS delimitation saying it went against the Forest Act that mandated the protection of forested areas; it was against the Constitutional Right to life, livelihood and a safe environment of the 20,000 people who lived in 56 villages in the sanctuary area, depending on it for animal fodder and forest produce such as herbs and honey. Moreover, the government had not consulted or even informed local people about the proposed project, which would pollute the air and water of the entire area, and possibly cause an increase in salinity with the reduction of tree cover and open cast mining.

LAS further alleged that while the government had gone to great lengths to grant land to Karkhana even though between 1981 and 1994, it had disregarded the petitions of thousands of locals for residential, agricultural and pastoral land, to which they were entitled. The Company had started construction of its plant with local supplies of water and not desalinated water as it was claiming to the media, thus causing even more distress to the locals. Finally, the NSWS delimitation violated various international conventions to which the GoI is a signatory, including the Convention on Biological Diversity signed at the Earth Summit in Rio in 1992<sup>23</sup>.

Even as the government's move to grant land to Karkhana was attracting criticism from the media and NGOs, one of its own departments, the Department of Forests came out with an internal report in December 1995 indicating that Karkhana was encroaching on 107.40 hectares of forest land. The report suggested that the Company had started building a private road on this land and had also laid out markers indicating that it would start more construction on this land soon. This would be illegal since any construction on forest land required permission from the

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<sup>22</sup> CERS (Consumer Education and Research Society) (1995) Special Civil Application No. 6707 of 1995, In the High Court of Gujarat at Ahmedabad. Unpublished Document

<sup>23</sup> Lok Adhikar Sangh (1995)

Department of Forests, GoG. In addition, the proposed jetty of the Company would be built deep in the Kharo creek, thus encroaching on the reserved Western Mangrove Forest. This too was deemed unlawful under the Indian Forest Act 1927, Forest Conservation Act 1980 and Environment Protection Act 1986<sup>24</sup>.

Finally, along the lines of the objection of Gujarat's Forest Department to the allotment of forest land to Karkhana, the national NGO, the World Wide Fund for Nature- India (WWFNI) filed a case in the Gujarat High Court in 1996. WWFNI challenged the granting of ecologically vulnerable forest areas for a cement plant. It opposed the proposed construction of a jetty by the Company since it would be done in the protected Coastal Regulation Zone (CRZ). India's CRZ laws forbid construction within 500 metres of the high tide level without the permission of the MoEF.

WWFNI's case was that this permission had not been taken, and it should not be given because the CRZ area sought by Karkhana contained endangered mangrove forests. Mangroves within the CRZ would be destroyed by the Company for building its jetty and for taking a road from the jetty to the plant site. In addition, WWFNI asserted that the Court must direct the Central Government to prosecute all those, including the provincial government, which had contravened environmental regulations to allow construction on forest and CRZ land<sup>25</sup>. The Court did indeed step in on this point and ordered the Company to stop further construction in the CRZ area till it had reached a decision on the WWFNI case.

The chain of events and contests that arose in the grant of land and setting up of Karkhana's cement plant in Kutch clearly indicate the unsteadiness of the land liberalisation process. In some cases, questioning over the grant of land to Karkhana came from within departments of the government. In most instances, the state and the cement Company were seen by non-state litigants and sections of the media as a united party in the attempts to liberalise land rapidly, at a very high cost to the environment and local livelihoods.

The shaping of protest around the Karkhana case indicates that opponents did not see the state's role in the transfer of land as minimal or even legitimate. The state, far from being a distant, facilitating party, continued to be drawn into the Karkhana case after the initial transfers of land. This was thus not a state in rapid, unequivocal withdrawal from the sphere of privatised, liberalised land. The next section shows it to have been central not just in the pinning of criticism over the Karkhana issue, but also fundamental in the manoeuvring and management of this opposition and litigation that Karkhana faced after it had been granted titles to land.

### The state in a liberalising landscape

The role of Gujarat's state in making possible the entry and continued existence of Karkhana in Kutch can be seen at three levels. On the one hand, the state generated legitimating ideas that created the context for Karkhana being seen as a positive force in the Kutchi economy. Second, government institutions negotiated with state as well as non-state actors on behalf of Karkhana through the 1990s. Finally, government officials and Gujarat's political executive actively dissipated the political protests and opposition that had been generated by Karkhana's entry into

<sup>24</sup> Conservator of Forests (1995) A Detailed Report on the Unauthorised Encroachments on Reserved Forest Lands by the Sanghi Cement Company, Kutch Circle. Unpublished Document

<sup>25</sup> WWFNI (World Wide Fund for Nature- India) (1996) *Special Civil Application No. 2870, In the High Court of Gujarat*, Unpublished Document

Kutch. Each of these crucial functions performed by the state in a liberalising landscape will now be discussed in turn.

The introduction to this paper suggested that the early postcolonial state's ideas of land to the tiller, which envisaged parcelling this resource into small family units, are no longer considered developmentally feasible. Gujarat's new mantra is rapid economic growth, through the avenues of mass corporate farming and 'mega' industry<sup>26</sup>, the base for which remains land. At the level of formal policy, the notion that deregulated land use must form the base for India's economic liberalisation is reflected in the Karkhana case. Thus, the text of the legislative assembly resolution that sought to delimit the area of the NSWS to enable mining declared that

...the rich minerals in this area are very essential for the development of Kutch...which is a backward district.... The area is frequented by droughts leading to large scale migration of (the) population...unemployment and poverty. Minerals are the main resources over there and it is of paramount importance that the mineral based industry should be established as key to the future development...a number of cement plants can be established with the use of the large deposits of limestone leading to economic prosperity of the area. ...unless these areas are taken out of the sanctuary these projects will run into serious difficulties... and also lead to loss of investment already tied up. Government has received several applications for setting up cement factories...

- Text of the Assembly resolution, 1995<sup>27</sup>

The preceding excerpt suggests that ideas of development through economic liberalisation, including the liberalisation of land, are not necessarily being projected prominently and by themselves at the public level. Instead, in the Karkhana context, these ideas were correlated with other powerful, if vague and unsubstantiated ideas such as employment generation, migration control, and 'development'. This interweaving of ideas is seen not only in the discourse of the official state as a whole, but also at that of individuals within the state. Thus, one comes across the Minister for Industries justifying the setting up of the cement plant on the grounds of employment generation for the local populace and socio-economic uplift of the entire district<sup>28</sup>.

While it is true that the cement enterprise was normatively supported by different state actors, we also know that the ideas of 'overall development' and 'the greater common good' associated with Karkhana were challenged by some government officials as well as NGOs and people's groups. For instance, in 1996 an autonomous organisation, the National Environmental Engineering Research Institute (NEERI), funded by the Government of India came out with a report on the Karkhana project at the behest of the Supreme Court. NEERI contradicted many of the ideas on which Gujarat's government was justifying the cement plant in Kutch. It did not see gains in equity and social justice emerging from the project, and it was not convinced about the plant and jetty's positive or even harmless relationship with the region's ecology<sup>29</sup>.

Any criticism of Karkhana's entry into Kutch and its takeover of a large and ecologically sensitive landmass was challenged by the Company as well as the state.

<sup>26</sup> Times of India 'Maldharis demand pastoral zones', *Times of India*, Ahmedabad Edition, 23/9/05

<sup>27</sup> Reproduced in Economic Times, 'Text of Assembly resolution on sanctuary', *Economic Times*, Bombay Edition, 28/7/95

<sup>28</sup> Minister for Industries, Government of Gujarat, quoted in Times of India, 6/6/95, cited in Lok Adhikar Sangh (1995)

<sup>29</sup> NEERI 1996, in Rathi, A.K.A (1997) Indian Council of Enviro-Legal Action versus Union of India and Others, Special Civil Application No. 590 of 1997, Affidavit in Reply on behalf of the GoG, Unpublished Document



For instance, sections of the media and NGO activists pointed out that these parties termed those who questioned the gains of the liberalisation agenda in the Karkhana case ‘anti-development, anti-national terrorists’<sup>30</sup>. The so-called ‘terrorists’ were even accused of working with developed countries to keep Gujarat underdeveloped<sup>31</sup>.

The latter, to me, represent a powerful set of ideas. In these, nationalism is interwoven with rapid industrialisation on a base of liberalised land, development and making ‘sacrifices’ for growth. Indeed, when one looks at the outcome of litigation faced by Karkhana in the 1990s, it is evident that these ideas, promoted most vocally by the state, prevailed. Thus, overriding various objections to the cement plant, while dismissing the LAS petition challenging the denotification of parts of the NSWS, the High Court of Gujarat ended with the words ‘it is clear that the people of Kutch district will be benefited at large’<sup>32</sup>.

Having surveyed the critical role played by Gujarat’s state in generating legitimating ideas like development, mega industrialisation and employment creation in order to not just facilitate, but fundamentally make possible the operationalisation of Karkhana’s enterprise in Kutch, I now turn to the interventions of the institutional government system in this process.

At one level, the story of the GoG’s institutional assistance to the Karkhana project is straightforward and may reflect its generally accepted and visible role in a liberalising landscape. This government is expected to attract entrepreneurs, make available suitable locales and packages of, say, tax incentives, cut red tape, and should hurdles in the form of litigation arise, support the private player fully. What this aspect of official facilitation does not reveal of course is the extent of manoeuvring and contortion that is being undertaken by contemporary governments to promote the liberalisation process and its principal private actors.

That manoeuvring will be required in a liberalising landscape is almost obvious. The government system is faced with a situation of having to tackle and sometimes undo institutional rules and practices created by it in an earlier developmental, interventionist role. These rules and practices have not disappeared with the mere declaration of policies and ideas of liberalisation. Instead, they are having to be negotiated. The following paragraphs highlight the role of Gujarat’s government system as it manoeuvres through its own regulations and committees, described by some officials as ‘hurdles’, on behalf of Karkhana<sup>33</sup>. They show departments of the government (a) facilitating the entry of Karkhana by changing and overlooking procedures, (b) acting as brokers on behalf of Karkhana before various government bodies and law courts, and (c) deliberately obfuscating procedures and rules in the transfer of land to Karkhana.

We have seen that the NSWS was formed in 1981 for the protection of wildlife. An attempt was made by the government executive to reduce the boundaries of the sanctuary by order in 1993 and open up the delimited area for mining for the production of cement. When this was challenged in Court, a successful change was made to the boundary of the sanctuary using the mandate of the legislative assembly. Here, on the advice of the Department of Industry, the Department of Mines and the Chief Minister’s Office, the government system had been able to overturn a step

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<sup>30</sup> Indian Express ‘Narayan Sarovar sanctuary delimited’, *Indian Express*, Ahmedabad Edition, 28/7/95

<sup>31</sup> Nambiar, P. (1995, 72-75)

<sup>32</sup> High Court of Gujarat (1995) *Decision regarding Special Civil Application Nos. 6507 and 6707 of 1995*, given on 11/10/1995. Unpublished Document

<sup>33</sup> Rathi, A.K.A (1997)

towards environmental conservation it had taken some decades ago. In the overturning of this order, the government had not thought it fit to consult the Wildlife Advisory Board that its Department of Forests had constituted in 1994 under the Wildlife Protection Act 1972. Its mandate was to advise the government, especially in matters such as the changing of land use of sanctuaries<sup>34</sup>.

The preceding is a case of facilitation of Karkhana's entry into Kutch by legally easing rules and ignoring the opinion of advisory bodies that it is not mandatory to consult. In other instances, one sees particular departments of the government not just easing rules, but actually negotiating with and confronting other provincial government departments, the national government and environmental activists in an act of brokerage for Karkhana. The manoeuvring around the environmental compulsions posed by the Coastal Regulation Zone of Kutch illustrates this point.

In February 1995, on being informed about the proposed cement plant of Karkhana, the national MoEF had insisted that the Company seek a full environmental clearance. Then, on being requested by the Company, the GoG made a representation to the MoEF that it should consider encouraging this 'export-oriented' operation. On the recommendation of the GoG, the MoEF sent a letter to Karkhana in June 1995 waiving certain environment-related regulations, but emphasising the need for compliance with others.

The Ministry had indicated that exemption of certain environmental clearances granted to Karkhana was on the condition that (a) no mining would be undertaken within 25 kilometres of the sanctuary, (b) the Company should submit an environmental management plan to the Ministry before starting production, (c) state of the art technology would be used to keep land, air and water pollution under control, (d) liquid effluents would be treated according to the stipulated standards of the Gujarat Pollution Control Board. Reversing its earlier order of a full environmental clearance, the MoEF had then added that since the cost of the Company's captive jetty facility was less than 0.5 billion rupees, it would not need to obtain this clearance from the Ministry. However, it would still need to take permission from the Ministry for the jetty which was proposed to be located within 500 metres of the CRZ<sup>35</sup>.

On getting this letter, Karkhana asked the GoG to intervene again. The Company found the restriction on mining within 25 kilometres from the sanctuary 'not acceptable' since the mining site granted by the GoG was within five kilometres of the new sanctuary limit<sup>36</sup>. Taking this concern into account, the GoG wrote to the MoEF once again, indicating that

...keeping in view that the entire local populace, successive state governments, scientific research reports, all indicate the project has positive impacts, and looking into the above facts we request you to kindly amend your letter dated 16<sup>th</sup> June 1995 to revoke the conditions of mining of limestone 25 kms away from the sanctuary...

- Government of Gujarat<sup>37</sup>

With the brokerage of GoG, Karkhana was able to get several environmental checks and balances waived, including the restriction of not mining near the sanctuary.

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<sup>34</sup> Lok Adhikar Sangh (1995, 34)

<sup>35</sup> MoEF (Ministry of Environment and Forests) (1995) 'Subject: Export Oriented 2.6 MTPA Cement Plant and Captive Jetty facilities at Kachchh- Exemption from Environmental Clearance' *Office Memorandum*, No. J- 11012/105/94-1A (1), 16/6/1995, Unpublished document

<sup>36</sup> In High Court of Gujarat (1995)

<sup>37</sup> Ibid

However, the Company or the GoG were unable to convince the MoEF about overlooking CRZ restrictions for the setting up of the Company's jetty.

The MoEF had issued a notification in 1991 under the Environmental (Protection) Act 1986, which declared stretches of the Indian coast as CRZ. These were zones in seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action up to 500 metres from the High Tide Line. The MoEF had set out some activities that would be prohibited within a CRZ, including in the area between the High Tide and Low Tide line. The construction of a jetty was prohibited under CRZ rules, other than in exceptional circumstances. To determine the latter, environmental clearance from the MoEF was mandatory. The Ministry's stance on the CRZ issue was strengthened when in 1996 WWFNI filed a case against Karkhana, GoG and MoEF asking how a jetty had been proposed in a region that came under CRZ rules<sup>38</sup>.

GoG found itself at an impasse on the CRZ issue. Karkhana's project would not be viable without a captive jetty, and according to CRZ restrictions, this jetty could not be built because it fell within the regulated zone. Having attempted, and succeeded in brokering other environmental clearances for Karkhana, on getting stuck on the CRZ, GoG combined brokerage with other methods of manoeuvre. It actually went through a knowledge-altering exercise wherein, through a different system of classification, it was able to prove before the MoEF and the High Court that CRZ 500 metre restrictions did not apply to the coast on which Karkhana's jetty was to be located! All this after it had first agreed that the jetty would fall within the CRZ and had thus asked the MoEF to waive this restriction for Karkhana.

Confronted with litigation from the WWFNI and the insistence of the MoEF, the GoG proposed that the land it had sold to the Company for building its jetty bordered a creek and not the open sea. According to the Coastal Zone Management Plan proposed by the GoG and approved by the MoEF in September 1996, the CRZ 500 metre limit did not apply to creeks. The building limit for creeks was 100 metres from the High Tide line, beyond which Karkhana could be allowed to build its jetty. The MoEF and the High Court were compelled to accept this line of argument and allowed construction of the jetty, which stands in the Kharo creek today<sup>39</sup>.

That the process of brokerage and manoeuvre undertaken by the GoG was not unique to the Karkhana case is made clear by the fact that one of its departments, the Gujarat Maritime Board (GMB) lists processes of manoeuvre around environmental laws as an official activity on its website. That is, under the 'activities' section of its environment cell, the GMB includes 'obtaining environmental clearances under the CRZ notification for port projects'<sup>40</sup>.

Having looked at two forms of manoeuvre- the simplification/alteration of laws, and brokerage- being undertaken by departments of Gujarat's government system on behalf of private enterprises while liberalising Gujarat's landscape, I turn to the last form of manoeuvre visible in the Karkhana case. The following paragraphs discuss the government's deliberate blurring of laws and procedures in order to push through decisions. Two illustrations are provided here. The first looks at the tone of a letter written by the Collector of Kutch while awarding land to Karkhana, and the

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<sup>38</sup> WWFNI (1996)

<sup>39</sup> High Court of Gujarat (1997) Order regarding Special Civil Application No. 1750 of 1997, in Special Civil Application No. 10605 of 1995, with Special Civil Application No. 1743 of 1997, in Special Civil Application No. 2870 of 1996, with Special Civil Application No. 3609 of 1997, in Special Civil Application No. 10605 of 1995, given on 19/6/1997. Unpublished Document

<sup>40</sup> GMB, 'Activities of the Environment Cell', [www.gmbports.org/env\\_act.htm](http://www.gmbports.org/env_act.htm), accessed 7/7/06

second discusses the government's encouragement of piece-by-piece development of the Karkhana project, in order to keep its scale under the level of clearances required for large-scale initiatives.

In June 1995, the then Collector of Kutch wrote to Karkhana sanctioning the 250 acres of coastal land they had requested to build a jetty and roads to connect this with their cement plant. The Collector's letter said that

...the Company would...need an NOC (no objection certificate) from the Gujarat Maritime Board before getting possession of land. The land would be given a metre away from the high tide level...in addition to...these conditions, any other terms and conditions of the government would be binding on the Company if these came up...

- Collectorate Kutch 1995<sup>41</sup>

While the Collector's letter mentioned some conditions for sanctioning the coastal land, it did not make the 500 metre CRZ rule explicit. The other terms and conditions for starting construction were also kept vague, yet open ended. This suggests that even as the government system has simplified rules and brokered deals to liberalise the landscape, it has also had to ride the institutional momentum of the interventionist state, and comply with its normative and legal compulsions to follow older sets of rules. The latter however, have been kept deliberately indistinct, even 'blurred'.

One can call the lack of clarity in the Collector's letter above, either a case of inefficiency, implying omission, or of oversight, implying commission, in the need to mention CRZ rules to the Company. This may put the onus for the way things turned out, on to an individual official, i.e., the Collector. However, this would be too convenient an explanation. A far more plausible one would lie in the Collector's compulsion to observe, and be seen as observing, all applicable governmental rules in his letter to Karkhana. He would have to go through this process not merely as an individual officer, but also on behalf of a government that is making the transition from developmental interventionism to liberalisation. Of course, in this particular case, the Collector merely alluded to rules that applied to Karkhana. He did not spell them out. Nor did the Company have any compulsion to find them out. The Karkhana jetty was sought to be built in this deliberately blurred space.

The second example of the deliberate lack of clarity in the land liberalisation process comes from the piece-by-piece manner in which various land deals and related environmental clearances have been obtained in the Karkhana case. On facing litigation from WWFNI, the national MoEF had appointed a committee of experts to ascertain whether the Company's proposed jetty would be violating CRZ laws and harming the coastal environment. The committee's report indicated that the Company had sought separate clearances for its captive limestone mines, cement manufacturing plants, captive jetty and power plant from the Gujarat Pollution Control Board and the national MoEF, spread over the period 1992-1996.

...The appraising agencies instead of treating these individual activities separately, should have insisted on a single project appraisal in order to assess total environmental impact of the entire project. The Committee was not able to get a picture of the total environmental impact of the project on the coastal ecosystem...

- Agarwal et al<sup>42</sup>

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<sup>41</sup> Collectorate Kachchh (1995)

<sup>42</sup> Agarwal, A., C.J. Saldanha, P. Pande, B.C. Chaudhry, Nominee of the National Institute of Oceanography, Nominee of the Survey of India and S.K. Aggarwal (1997) *Report of the Committee appointed by the Ministry of Environment and Forests to assess the Captive Jetty proposal of Sanghi Industries Limited in Kachchh district, Gujarat*. Delhi: Centre for Science and Environment, Unpublished Document

Committee members also pointed out that in the mere four days available to them to visit the site and write a report, a comprehensive appraisal even of the particular aspect of the project allotted to them was not possible. For instance, the Committee had not deliberated the fact that a port was coming up just 80 kilometres from the proposed jetty site. The Company could use this port to transport its product. It did not need to build a dedicated jetty and in the process destroy scarce mangroves and a unique coastal ecosystem<sup>43</sup>.

Interestingly, even though the Agarwal Committee saw that environmental clearances for the cement project had been gained in fragments over four-plus years, this Committee too was compelled to give its clearance for the part of the project- the coastal jetty- that it had been asked to judge. Looking at the project holistically for its cumulative environmental impact was not in the mandate of this committee, nor in that of any other. It could have been, had any provincial government authority demanded this. However, this was not the case. In fact, as demonstrated above, provincial government authorities were functioning as brokers, arguing the case for environmental clearance on behalf of the Company.

The illustrations of piece-by-piece liberalisation, governmental brokerage on behalf of private companies<sup>44</sup>, and the simplification and easing of laws to facilitate the entry of private enterprise into Gujarat tell a story of the mechanics of liberalisation. This story is informative in itself. It becomes doubly so when one highlights the central role of the government system in this process. This sub-section has attempted to do just that.

Having looked at the state's intervention in the Karkhana case through the production of legitimating ideas as well as governmental manoeuvring of obstacles faced by the Company, the final sub-section turns to the state's engagement with the layers of politics surrounding the issue.

The Karkhana case and the process of land liberalisation in the 1990s in general, were embedded in a varied political milieu. Parts of this milieu were more 'formal' and official than others. Among the former, one would include party politics, especially legislative politics. Much of the Karkhana case was not discussed or even brought to the notice of the legislature. The government system, including the Chief Minister's Office, the departments of Forest and Industry, and the Kachchh Collectorate, buoyed by the grand ideas of liberalisation, made most decisions regarding the case through executive order. Yet, some aspects of the project were indeed brought to the legislature. Among these was the delimitation of the NSWS to provide mining facilities to Karkhana.

We have seen that owing to litigation and the subsequent decision of the High Court<sup>45</sup>, the Janata Party-Congress government failed to push the mining component of the project through executive decision in 1993. However, the same was made possible by a legislative vote over the delimiting of the NSWS, proposed by the BJP government. While this formal, democratic process sanctioned an important part of

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<sup>43</sup> Pande, P. (1997) 'Letter addressed to the Chair of the Committee appointed by the Ministry of Environment and Forests to assess the Captive Jetty proposal of Sanghi Industries Limited in Kachchh district, Gujarat', Delhi. Unpublished document

<sup>44</sup> Atul Kohli suggests that what we see unfolding in India today is a 'business friendly' process of liberalisation, rather than a 'market friendly' one. See Kohli, A. (2006) 'Politics of Economic Growth in India, 1980-2005', 2 Parts, *Economic and Political Weekly*, Vol. 41, No. 13, and Vol. 41, No. 14, April. Pgs. 1251-59 and 1361-70

<sup>45</sup> High Court of Gujarat (1995)

the Karkhana project, and affirmed the government's support for it, we know that the legislative building of consensus was rather cosmetic. Only the ruling party voted for the resolution. All questions from the Congress Opposition about the large amounts of money that had allegedly exchanged hands between Karkhana and BJP politicians, the project being passed on the BJP's absolute majority and being against the interests of Kachchh, were brushed aside when the party got thrown out of the house for rowdy behaviour<sup>46</sup>.

The seeking of democratic consensus by the government, and the questioning of the Karkhana project by the Opposition were played out along a script of formal, procedural democracy. The latter is being suggested because the proposition of the project by the ruling party, and the opposition by the Congress party in 1995, stood reversed in 1993. At that time, the delimitation of the NSWS had been sanctioned by the ruling Congress and vehemently opposed by the BJP<sup>47</sup>. The BJP, in fact, had accused the Congress government of 'underhand dealings' with commercial interests in the Karkhana case<sup>48</sup>. Despite the scripted and procedural nature of this exercise, it had a wider democratic purpose that went beyond party politics. This wider purpose can be seen as the formal, 'consensual' legitimisation of the liberalisation of land for Karkhana.

The legislative, formal political processes associated with the Karkhana case may have been problematic. Yet, it is these processes that were elevated and acknowledged as valid by various layers of the state and even by Karkhana. For instance, soon after the NSWS was delimited in 1995, Karkhana released an advertisement in the local newspapers. The Company indicated that it was 'thankful' for prompt and prudent action in denotifying the 'technically existent but practically non-existent' sanctuary in the face of the 'wild allegations made by a few people against the Government'<sup>49</sup>.

Juxtaposed with the layer of 'legitimate' and 'elevated' politics in the Karkhana case, is a layer of politics and opposition, driven by NGOs and people's groups affected by the cement project. This layer of politics was portrayed as illegitimate, and was neutralised and shunned by the government and by Karkhana. Thus as we have seen already, the proponents of this politics including activists and NGOs who questioned the project on environmental grounds, or on the claimed growth in trickle down prosperity, were termed anti-national opponents of development<sup>50</sup>. Such defamation of political opposition was bolstered by the fact that while there were objections to the manner in which the Karkhana project was being ushered in to Kachchh, or to the liberalisation of land for it, this opposition was fragmented, and could be counter-balanced.

For instance, two of the supporters of the umbrella NGO LAS that filed litigation against the NSWS delimitation were the Kachchhi NGOs- Gujarat Jan Jagaran Sangh (The Collective to Awaken the People of Gujarat) and Kachchh Lok Samiti (Kachchh People's Society). The former is an organisation of pastoralists that works in western Kachchh. Its argument was that with government revenue and forest land being allotted to private industry, its use as wild pasture would no longer be

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<sup>46</sup> Nambiar (1995: 73)

<sup>47</sup> CERS (1995)

<sup>48</sup> Sayed, A. 'BJP ministry may bypass HC order on Chinkara sanctuary', *Times of India*, Ahmedabad Edition, 6/6/95

<sup>49</sup> In Nambiar (1995: 73)

<sup>50</sup> Indravijaysinh Jadeja, State Minister for Forests, in *Indian Express*, 'Narayan Sarovar sanctuary delimited', *Indian Express*, Ahmedabad Edition, 28/7/95

possible for the many pastoral groups of Kachchh who had no other means of livelihood. This NGO was also concerned about the pollution of water bodies and the increasing soil salinity that the entry of cement companies into Kachchh portended. This would have been compelling opposition, had it not been counterbalanced by other groups that also claimed to speak for the people of Kachchh.

Affidavits submitted to the High Court of Gujarat indicate that in 1995-96, the Industries Development Committee of Western Kachchh and some of the headmen from villages around where the Karkhana plant was to be set up, insisted that they would welcome industry and development into their villages (Paschim Kachchh Udhogic Vikas Samiti 1996). Thus, in the Karkhana case, opposition from groups like LAS and local pastoralists was neutralised by support from village politicians and bodies of traders, who had been promised jobs by the Company, and assured of the spill-over effects that would accrue when western Kachchh became a hub of the cement industry.

In a complex political milieu of governmental and legislative proposition and opposition, the building of democratic consensus and the neutralising and delegitimising of extra-governmental opposition, the Karkhana project was pushed through. The paragraphs above suggest that the project was made possible and legitimate not despite the milieu of politics and ‘stealth’<sup>51</sup> as it were, but because of politics.

### Conclusion

This paper has sketched the story of the Indian state in the liberalising landscape of the 1990s. It has focused on a case of the deregulation and privatisation of land for a cement project in Kutch, Gujarat. The Karkhana project is fully functional today. Its existence, together with that of other such enterprises underlines the fact that liberalisation is a part of India’s politico-economic fabric today. However, this study has also highlighted the complexity and contests that are part and parcel of the process of liberalisation.

The Indian state is at the heart of the nuances and contortions associated with liberalisation. It is, crucially, also at the core of the processes through which these complications are manoeuvred and negotiated. Liberalisation may not be proceeding unhindered in India today, but without the facilitation and active intervention of the state, one wonders if liberalisation would be able to proceed at all.

In bringing out the centrality of the state in liberalisation, the paper has questioned and gone beyond two dominant paradigms of the place of the state in India’s contemporary political economy, viz. withdrawal and regulation. The state has been detailed in this paper as (a) the generator of legitimating ideas about the positive effects of liberalisation, (b) the institutional supplier of legislative authenticity and manoeuvrer of unfavourable bureaucratic regulations and anti-liberalisation contests, and (c) the buffer through which both democratic, official and party as well as grassroots, NGO and non-party politics is acknowledged, filtered and tackled.

A multi-faceted state that is central to the process of liberalisation cannot be categorised as backtracking from the economic field. Moreover, a state that is going out of its way to argue for, represent and support the private actors of the liberalising landscape, both legally as well as extra-legally, is difficult to classify as being on the facilitative, regulatory sidelines of liberalisation. The Gujarat state’s engagement with

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<sup>51</sup> Jenkins, R. (1999) *Democratic Politics and Economic Reform in India*. Cambridge: Cambridge University Press

the Karkhana cement enterprise must thus be seen as a continuing state interventionism in the spheres of economy and development.

The contemporary interventionism of the Indian state cannot, of course, be classified along with the activity of an entity that was involved with economic production, distribution and occasionally redistribution in an earlier developmental era. Instead, this continued involvement in the spheres of the economy and development may be seen as the manoeuvres of a state looking for a role and continued relevance in a changing national as well as global politico-economic context. The Karkhana case is but one illustration of the on-going reinvention of the state in a dynamic milieu. This illustration has modelled the evolving state as a legitimator of and negotiator and buffer in the contested and complex liberalising landscape.